

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

GINMAR CORPORATE PROMOTIONS,	)	
INC. and GINA CANTAVE,	)	
	)	
Plaintiffs,	)	No. 08 cv 4109
	)	
v.	)	Judge Darrah
	)	Magistrate Judge Cox
CARDINAL HEALTH, INC.	)	
	)	
Defendant	)	

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**PLAINTIFFS' MEMORANDUM IN SUPPORT  
OF THEIR MOTION FOR ORDER TO PRESERVE EVIDENCE**

Plaintiffs request that this Court issue a preservation order to ensure that Defendant Cardinal Health, Inc. does not destroy or alter documents – including stored electronic information – relevant to the claims in the above titled action. Parties have a duty to preserve documents that they know, or reasonably should know, are relevant to the pending lawsuits. *Silvestri v. General Motors*, 271 F.3d 583, 591 (4<sup>th</sup> Cir.2001); *MDL-1791, In re: National Security Agency Telecommunications Records Litigation*, (N.D.Cal.2007); *Kronisch v. United States*, 150 F.3d 112, 126 (2d Cir.1998); *In re Napster, Inc. Copyright Litigation*, 462 F.Supp.2d 1060, 1067 (N.D.Cal.2006).

The Court has authority to issue such preservation orders. *See, e.g., Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (noting that courts have inherent authority “to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.”); *Niggard Sec. Ins. Co. v. Lakewood Egg’s & Mfg. Corp.*, 982 F.2d 363, 368 (9<sup>th</sup> Cir.1992) (a court’s power includes the “broad discretion to make ... evidentiary rulings

conducive to the conduct of a fair and orderly trial.”); *Capricorn Power Co. v. Siemens Westinghouse Power Corp.*, 220 F.R.D. 429, 434 n.2 (W.D.Pa.2004) (“recognizing that it has become routine to order the preservation of evidence prior to the beginning of the discovery period at the initial case management conference and sometimes even before such a conference in complex litigation”).

Plaintiffs bring this motion, in part, because much of the key evidence in this litigation dates back to a time that could plausibly be outside Defendant’s “normal window” of record preservation.

Plaintiffs’ Complaint describes a business history between Plaintiffs and Defendant going back to 1999. (Compl. ¶ 20). During the nine years between 1999 and the present, the parties exchanged many thousands of e-mail messages. Additionally, numerous drafts of key documents in this case were executed and are believed to be in the possession of Defendant.

Defendant is a global corporation and is Ranked Number 19 on the Fortune 500 list. Without an Order from this Court directing it to preserve evidence it is likely that evidence in this case, particularly the oldest documents and email messages, will be destroyed by Defendant whether as part of litigation strategy or simply as a matter of storage policies and capabilities.

For all the reasons argued above, the Court should grant plaintiffs’ motion and issue an order requiring Defendant Cardinal Health, Inc. to preserve evidence. The Court should also require Defendant to identify any evidence or documents they have already destroyed concerning this litigation.

Dated: July 31, 2008

Respectfully submitted,

GINMAR CORPORATE  
PROMOTIONS, INC. and GINA  
CANTAVE

/s/ Steven E. Schwarz

Steven E. Schwarz, Esq.  
THE LAW OFFICES OF  
STEVEN E. SCHWARZ, ESQ.  
2461 W. Foster Ave., #1W  
Chicago, IL 60625  
(773) 837-6134 (tel)  
(773) 275-0202 (fax)  
[Stevenschwartz23@yahoo.com](mailto:Stevenschwartz23@yahoo.com)

One of Their Attorneys

Steven E. Schwarz, Esq.  
THE LAW OFFICES OF  
STEVEN E. SCHWARZ, ESQ.  
2461 W. Foster Ave., #1W  
Chicago, IL 60625  
(773) 837-6134

Carl J. Mayer, Esq.  
MAYER LAW GROUP LLC  
1040 Avenue of the Americas, Suite 240  
New York, NY 10018  
DIRECT: (212) 382-4686  
FAX: (212) 382-4687

Walter R. Dale, Esq.  
LAW OFFICES OF WALTER R. DALE  
105 W. Madison Ave., 23<sup>rd</sup> Floor  
Chicago, IL 60602

Attorneys for Plaintiffs

Dated: July 31, 2008

**CERTIFICATE OF SERVICE**

I, Steven E. Schwarz, an attorney, hereby certify that, on this 31st day of July, 2008, I served the foregoing Memorandum in Support of Motion For Order To Preserve Evidence on counsel for defendant by first class mail addressed to:

Wendy Hufford, Esq.  
General Counsel  
Cardinal Health, Inc.  
7000 Cardinal Place  
Dublin, OH 43017

By: /s/ Steven E. Schwarz  
Steven E. Schwarz, Esq.  
THE LAW OFFICES OF  
STEVEN E. SCHWARZ, ESQ.  
2461 W. Foster Ave., #1W  
Chicago, IL 60625  
(773) 837-6134 (tel)  
(773) 275-0202 (fax)  
[Stevenschwartz23@yahoo.com](mailto:Stevenschwartz23@yahoo.com)

Attorney for Plaintiffs